IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3950 of 2002
Date of Decision: 13.8.2007

Wazir and others ...Appellants

Versus

Ram Parkash and others ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Sarv Shri Vinod Bhardwaj and K.S. Dhanora, Advocates, for the appellants.

Shri Sandeep Kotla, Advocate, for the respondents.

HEMANT GUPTA, J.

The following substantial question of law arises for consideration in the present appeal:-

> "Whether the suit could have been dismissed for want of appropriate Court fee?"

The plaintiff-appellants filed a suit for directing the defendants to give 52500 bricks to the plaintiffs in the year 1993-94, as per the lease deed dated 3.8.1989. It is the case of the plaintiffs that the defendants entered into lease deed with the plaintiffs for taking earth for five years i.e. from 2.8.1989 to 1.8.1994 for manufacturing of bricks. It was agreed that in consideration of lease, 52500 bricks were to be given by the defendants to the plaintiffs per annum. It was also agreed that after expiry of five years, the possession would be delivered back to the plaintiffs and during this period of five years, the defendants would be entitled to take earth upto 4 feet. The defendants started their brick kiln and they were required to give 52500 bricks to the plaintiffs. The defendants gave the

bricks for the year 1991-92 but did not supply the bricks to the plaintiffs for the year 1993-94. Consequently, the present suit for directing the defendants to give the bricks was filed.

In the written statement, the defendants admitted the execution of the lease deed as well as the terms and conditions thereof. But the defendants pleaded that they have paid the entire consideration to the plaintiffs.

The learned trial Court returned a finding that in terms of the lease deed Exhibit P.1, the plaintiffs are entitled to 52500 bricks in the year 1993-94, but under issue No. 4, it returned a finding that the price of the bricks was Rs.1300/- to 1400/- per thousands and therefore, the plaintiffs were required to affix the Court fee. Since the Court fee was not paid in terms of the order dated 4.3.1999, the suit was dismissed. The findings recorded by the learned trial Court, were affirmed in appeal by the learned first Appellate Court.

Learned counsel for the plaintiff-appellants has vehemently argued that in terms of the lease deed, the defendants were bound to supply 52500 bricks to the plaintiffs. Since the bricks were not supplied, the plaintiffs are entitled to the price thereof. The plaintiffs are ready and willing to affix the proper Court fees, which was required to be affixed before the learned trial Court; in the first appeal and in the second appeal as well. It is pointed out that while dismissing the suit, the learned trial Court should have given time to the plaintiffs to make up the deficiency in payment of Court fee. Having failed to grant such time, the judgment and decree passed by the Courts below, cannot be sustained in law. It is contended that earlier interim order dated 4.3.1999 cannot be used against

the plaintiffs at the time of final decision of the suit.

The sole argument raised by the learned counsel for the defendant-respondents is that in the event the proper Court fee is allowed to be affixed, the defendants' right of appeal will stands defeated.

I have heard learned counsel for the parties. Learned counsel for the respondents could not raise any meaningful argument to controvert the finding recorded on issue No. 1. It is an admitted fact that the lease was executed and that in terms of the lease, the defendants were to supply 52500 bricks and that neither the bricks nor the price thereof was given to the plaintiffs. Therefore, the argument that the right of appeal will be defeated, has no relevance as in fact, the defendants have no defence in the main suit itself.

In view of the above, the appeal is allowed. The judgment and decree passed by the Courts below, dismissing the suit for want of appropriate Court fee, is set aside. The suit for recovery of Rs.68250/- is decreed with costs. The plaintiffs shall also be entitled to interest @ 6% p.a. from the date of filing of the suit till realisation. The aforesaid decree is subject to plaintiff-appellants' depositing the Court fee of Rs.17,767/- (i.e. Rs.7,370 meant for the suit; Rs.7,370 meant for the first appeal and Rs.3,027 in the present second appeal), within a period of 3 months before this Court.

13-08-2007 (HEMANT GUPTA)
ds JUDGE